

DA 02-1158

**Before the
Federal Communications Commission
Washington, D.C. 20554**

MAY 21 2002

In the Matter of

**Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Rose Hill and La Grange, North Carolina)**

MB Docket No. 02-110
RM-10406

NOTICE OF PROPOSED RULE MAKING

Adopted: May 1, 2002

Released: May 17, 2002

Comment Date: July 8, 2002

Reply Date: July 23, 2002

By the Assistant Chief, Audio Division:

1. The Commission has before it for consideration a Petition for Rule Making filed by Conner Media, Inc. ("Conner") licensee of Station WZUP, Rose Hill, North Carolina, requesting the substitution of Channel 284C3 for Channel 284A and reallocation of Channel 284C3 from Rose Hill to La Grange, North Carolina. Conner requests modification of its license for Station WZUP to specify operation on Channel 284C3 at La Grange, North Carolina. Conner indicated that it would file an application for Channel 284C3 at La Grange if the channel is allocated to the community.
2. Conner filed its request pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). In support of its proposal, Conner contends that adoption of its proposal will result in a preferential arrangement of allocations by providing La Grange (population 2,805), with its first local service while not depriving Rose Hill (population 1,287), of its own local service as Station WEGG-AM is licensed to Rose Hill, of which Conner is also the licensee. According to Conner, the proposal will provide service to 229,088 people in 4,778 square kilometers. Conner states that all of the area currently receiving service from Station WZUP at Rose Hill is well served and that there will be no gray or white area created by the reallocation of the station from Rose Hill to La Grange.

3. We believe that Conner's proposal warrants consideration since the reallocation of Channel 284C3 could provide the community of La Grange with its first local broadcast service while not depriving Rose Hill of its sole local aural service. A staff engineering analysis indicates, using Conner's proposed site 16.8 kilometers west of the community, that the channel can be allotted to La Grange in compliance with the Commission's spacing requirements and that city grade coverage will be provided to the community. From this site, our analysis shows that the loss area of Channel 284A at Rose Hill contains 29,468 people in 1,821 square kilometers while the gain area for Channel 284C3 at La Grange contains 195,226 people in 4,112 square kilometers. We further show that both the loss area and gain area currently receive five or more aural services. While Station WZUP, at its present licensed site at Rose Hill, does not cover any part of the Goldsboro, North Carolina Urbanized Area, the proposed facility at La Grange would cover 100 percent of the Goldsboro Urbanized Area with a 70 dBu signal.

4. In accordance with Commission policy, if a rulemaking proponent intends to move its authorized facility to a community that is adjacent to an urbanized area and if its intended operation would place a city grade (70 dBu) signal over 50 percent or more of the urbanized area, the proponent is required to demonstrate that the intended city of license is sufficiently independent of the central city to justify a first local service preference.¹ We recognize that La Grange is not located within an urbanized area. Nevertheless, the proposed facility of Channel 284C3 at Conner's specified site would cover 100 percent of the Goldsboro, North Carolina Urbanized Area with its 70 dBu contour. Although Conner has provided some information regarding the community of La Grange, Conner is requested to provide additional information responsive to a Tuck analysis to determine whether La Grange is sufficiently independent of Goldsboro to merit a first local service preference.^{2 3}

¹ See Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995).

² See Huntington Broadcasting Co. v. FCC, 192 F. 2d 33 (D.C. Cir. 1951), RKO General, Inc. ("KFRC"), 5 FCC Rcd 3222 (1990), and Faye and Richard Tuck ("Tuck"), 3 FCC Rcd 5374 (1988). The independent factors set forth in Tuck are 1) the extent to which the community residents work in the larger metropolitan area rather than the specified community; 2) whether the smaller community has its own newspaper or other media that covers the community's local needs and interests; 3) whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; 4) whether the specified community has its own local government and elected officials; and 5) whether the smaller community has its own telephone book provided by the local telephone company or zip code; 6) whether the community has its own commercial establishments, health facilities, and transportation systems; 7) the extent to which the specified community and the central city are part of the same advertising market; and 8) the extent to which the specified community relies on the larger metropolitan area for various municipal services, such as police, fire protection, schools, and libraries.

³ Conner has provided the following information showing community status for La Grange. La Grange is incorporated, has its own local government and chamber of commerce as well as its own zip code (28551). La Grange has a newspaper, the Weekly Gazette. The library and schools are part of the Lenoir County system and there is a volunteer fire department and a police force.

5. Channel 284C3 can be allotted to La Grange, North Carolina, in compliance with the Commission's minimum distance separation requirements at Conner's specified site.⁴ The proposed site is located 16.8 kilometers (10.5 miles) west of the community of La Grange. In accordance with Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest for the use of Channel 284C3 at La Grange.

6. In view of the fact that the proposed allotment could provide a first local FM service to La Grange, North Carolina, without depriving Rose Hill, North Carolina, of its sole local service, we believe it would serve the public interest to solicit comments on the proposal to substitute Channel 284C3 for Channel 284A at Rose Hill and reallocate Channel 284C3 to La Grange, North Carolina. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Rose Hill and La Grange.

Community	Channel No.	
	Present	Proposed
Rose Hill, North Carolina	284A	----
La Grange, North Carolina	-----	284C3

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before July 8, 2002, and reply comments on or before July 23, 2002, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Peter Gutmann
Pepper & Corazzini
1776 K Street, NW, suite 200
Washington, D. C. 20006

9. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R., §§ 1.415, 1.419, interested parties may file comments on or before June 17, 2002, and reply comments on or before July 2, 2002. Parties may also submit an electronic comment by Internet e-mail. To get

⁴ The coordinates for Channel 284C3 at La Grange are 35-16-00 and 77-58-00.

instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commissioner's contractor, Vistrionix, Inc., will receive hand-delivered messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D. C. 20002. The filing hours at this location are 8:00a.m. to 7:00p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 – 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Effective April 8, 2002.

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding contact Kathleen Scheuerle, Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment

which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos,
Assistant Chief, Audio Division,
Office of Broadcast License Policy,
Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the FCC Reference Information Center at its headquarters, Portals II, 445 Twelfth Street, SW, Room CY-A257, Washington, D. C. 20554.